

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

NATIONAL PARKS
CONSERVATION ASSOCIATION, et
al.,

Petitioners,

v.

Case No. 17-60828

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

LUMINANT GENERATION CO.,
L.L.C., et al.,

Intervenors.

RESPONDENTS' STATUS REPORT

On March 6, 2018, the Court issued an Order (Document No. 514374174) granting Petitioners' and Respondents' Joint Motion to Stay pending the resolution of a petition for reconsideration and the completion of any reconsideration process concerning the rule at issue in this case, "Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan," 82 Fed. Reg. 48,324 (Oct. 17, 2017) ("Final Rule"). Pursuant

to the Court's Order, EPA submits this 90-day status report regarding the status of reconsideration proceedings.

On April 30, 2018, EPA announced its intention to convene a new rulemaking proceeding to solicit public comment on certain aspects of the Final Rule. On August 17, 2018, EPA signed a notice of proposed rulemaking that provided the public with an opportunity to comment on certain issues that include, but are not limited to, the issues raised in the petition for reconsideration. *See* "Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan: Proposal of Best Available Retrofit Technology (BART) and Interstate Transport Provisions," 83 Fed. Reg. 43,586 (Aug. 27, 2018). On September 26, 2018, EPA held a public hearing in Austin, Texas, to take oral testimony on the proposed rulemaking. Eight individuals representing environmental groups, industry, and the Texas Commission on Environmental Quality provided testimony.

The public comment period on the proposed rulemaking closed on October 26, 2018. EPA received approximately 1500 comment letters and emails from citizens, environmental groups, industry, and states. As EPA reported in its last status report filed on March 4, 2019, EPA has been reviewing the comments in preparation to draft responses to the comments. EPA is also in the process of briefing management to reach decisions on issues raised in the comments.

Accordingly, agency proceedings are ongoing and this case should therefore remain in abeyance. Pursuant to the Court's Order, EPA will submit a further status report no later than 90 days from the date of this report.

Dated: June 3, 2019

Respectfully submitted,

/s/ Stephanie J. Talbert

STEPHANIE J. TALBERT

United States Department of Justice

Environment & Natural Resources Division

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Counsel for Respondents

Certificate of Service

I hereby certify that I electronically filed the foregoing RESPONDENTS' STATUS REPORT with the clerk of the court for the United States Court of Appeals for the Fifth Circuit using the electronic case filing system of the court. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Dated: June 3, 2019

/s/ Stephanie J. Talbert

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